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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,140	07/07/2003	Curt Robert Loch	LOCH I	3097

7590 12/03/2004

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,140

Applicant(s)

LOCH, CURT ROBERT

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003 and 07 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-18 and 20-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>07-07-2003</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

At the outset, it is noted that the examiner of record in this application has changed. Please direct all future correspondences concerning this application to Examiner Jennifer E. Novosad, Art Unit 3634.

Election/Restriction

Applicant's election *without* traverse of species I, i.e., Figures 1-4, in the reply filed on September 7, 2004 is acknowledged. *Accordingly*, claims 8 and 19 are withdrawn as being drawn to a non-elected species.

Abstract

The abstract of the disclosure is objected to because "improved" in line 1 should be deleted. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 5, 10-13, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitations (a) "to a height dimension at least as great as the largest deck width of any skateboard which the security rack is designed to secure" in lines 3-5 of claim 1, (b) having a

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maximum width dimension smaller than the smallest wheelbase of any skateboard which the security rack is designed to secure in lines 5-7 of claim 1, (c) "at a distance apart that is greater than the largest deck thickness of any skateboard which the security rack is designed to secure" in lines 8-9 of claim 1, renders the claim indefinite. *In particular*, a skateboard is not an element of the claimed device and it is improper to seek to define claimed structure based on a comparison to some unclaimed element. In this case, the boundaries of the claim cannot be properly ascertained because one would not know whether their device infringed the instant claim until someone else later added a skateboard. *In other words*, a device as defined in the claims would infringe the claim with one particular skateboard while the exact same device would not infringe the claim when another skateboard is used. *Accordingly*, the features of the device, itself, must be defined instead of relying upon a comparison with an ascertained element. This rejection is also applicable to claims 12, 13, and 20.

The use of the phrase "may be" in claim 3, and "may" in claim 5, renders the claims indefinite since what "may be" to one, "may not be" to another, and therefore the metes and bounds of the claims cannot be properly ascertained since one would not know whether what is proceeding these phrases, e.g., used to join the loops together in claim 3, is being positively required by the claims.

Claims 10 and 11 are rendered indefinite since the claims fail to further limit the *claimed* structure of the rack.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 9-11, 12, 17, and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,293,412 (Draper '412).

Insomuch as the claims are best understood (in view of the rejections under 35 USC § 112, as advanced above), Draper '412 discloses a skateboard rack comprising a pair of spaced apart U-shaped support members (26B) defining a slot therebetween, a locking structure (32, 40, 42), defining a lock, including elements coupled to both support members (26B); with respect to claims 12, the first support member (26B) has a base (24) and the second support member (26B) has a base (38); *with respect to claims 20*, a portable mounting base (24, 38) and the support members (26B) are spaced apart and attached to the base (38); *with respect to claim 23*, the width (side to side) of the first support member (26B on the left side of Figure 1) is larger than the width (front to back) of the other support member (26B).

Claims 1-7, 9, 12-18, 20, 21, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,785,500 (Kennelly '500).

Insomuch as the claims are best understood (in view of the rejections under 35 USC § 112, as advanced above), Kennelly '500 discloses a rack comprising a pair (26, 28, is one of the pair) of spaced apart support members each having a portable base (at 22) and a locking structure (at 34, 32, and 36 - see Figure 3) coupled to both the support members; the locking structure

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includes elements which define loops (at 34 and part of 36 - see Figure 3) coupled to the support members which *may* have a lock (36) and when the lock (36) is not used the loops (at 34) *may* slide on the support members (26); the support members define inverted U-shaped members (at 28); *with respect to claim 13*, first member (on far left of Figure 1), second member (in middle of Figure 1), and a third support member (on far right of Figure 1) that are parallel to one another and each have a common base (at 14).

Claims 12-17, 20-22, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,096,068 (Therault '068).

Insomuch as the claims are best understood (in view of the rejections under 35 USC § 112, as advanced above), Therault '068 discloses a rack comprising a first support member (on the far left) having a base (14), a second support (second from the left) member having a base (14), a third support member (middle) identical to the first support member and mounted parallel to the second member and on the side thereof opposite to the first support member, with the bases of the first, second and third members being common; with respect to claim 16, the rack further comprising at least one other member (second from the right) identical to the first and third members and at least one other member (far right) identical to the second member; the members being elongated inverted U-shaped members having spaced apart ends and an elongated middle portion therebetween; *with respect to claims 20*, the base includes 14, 12, and 18.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Theriault '068 as applied to claims 12-17, 20-22, and 24 above, and further in view of U.S. Patent No. 6,263,709 (Kemery *et al.* '709).

Theriault '068 discloses the rack as advanced above.

The claim differs from Theriault '068 in requiring a ring slidable on each of the support members.

Kemery *et al.* '709 teach the use of a ring (see Figure 2) slidable (through 18) on two support members (10).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Theriault '068 with a ring slidable on each support member (at 16) for increased securement of items placed therein.

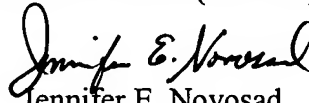
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
November 23, 2004